IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.598 OF 2007

Kokila H. Shah & Ors. ..Petitioners.

V/s.

Chittaranjan D. Shah & Ors. ..Respondents.

Mr.C.U.Singh i/b. M/s.Khaitan & Co. for petitioners.

Mr.S.A.Sawant with J.P.Sen i/b. Gobinalae Mohanty for respondent Nos.1 & 8.

Mr.K.S.Bapat with Dilip Mandaviaq i/b. Neel Halakar for Intervenors.

CORAM : A.P.DESHPANDE, J.
DATED : 25TH & 26TH APRIL, 2007.

ORAL JUDGMENT

1. An order passed by the Industrial Court permitting the withdrawal of the amount on its transfer by the Debt Recovery Tribunal is challenged by filing the present Writ Petition.

2. Few facts that are necessary for the adjudication of the dispute are narrated hereinbelow:-

3. The petitioner No.1 is the wife of petitioner No.2, whereas petitioner No.2 and respondent No.1 are real brothers. Respondent No.2 is the wife of respondent No.1 and respondent No.3 is the son of respondent Nos.1 & 2. Respondent No.4 is the wife of respondent No.3. The petitioners' family and the family of the respondent Nos.1 to 4 were inter alia

carrying on joint family business activities through various firms and corporate entities, including respondent No.8 viz. M/s. Manish Estates Pvt. Ltd. Both the families i.e. families of the petitioners and the respondent Nos.1 to 4 entered into a memorandum of understanding in the year 1994 with a view to settle all family disputes. It is the case of the petitioners that as per the said Memorandum of Understanding, the respondent Nos.1 to 4 were liable to pay the petitioners a sum of Rs.20 crores and were also under an obligation to discharge all the liabilities of the joint family business, so also, the liabilities of the petitioners. It is further the case of the petitioners that the respondent Nos.1 to 4 committed breaches of the terms of the Memorandum of Understanding executed in the year 1994. The petitioners as such were constrained to file a suit bearing No.1421 of 1997 in this Court wherein various interim orders came to be passed from time to time. Ultimately, by the final order the the dispute came to be referred to the Arbitration. The Arbitration proceedings are presently pending with Justice Shri D.R.Dhanuka,(retired).

4. Respondent Nos.5 to 7 are partnership firms who were running three cinema theatres in the premises owned by M/s.Manish Estate, respondent No.8. The respondent No.8 was the owner of the entire property situated at Dr. Annie Besant Road, Worli, Mumbai. The

said cinema theatre had gone to the share of respondent Nos.1 to 4 in the Memorandum of understanding executed in the year 1994. These three cinema theatres were closed down on 31/10/2002, on account of which the employees working therein came to be retrenched. The employees working with respondent Nos.5 to 7 raised a dispute before the Labour / Industrial Court. The employees working in the said three cinema theatres are represented by respondent No.9 Bombay Labour Union, a Trade Union registered under the Trade Unions Act. I am informed that at a later point of time the union ceased to represent the workers and the concerned workers were substituted in place of the union in the present proceedings. The complaints were filed under the provisions of Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices, 1971 being complaint No.923 of 2002 and 1043 of 2002. The complaint was filed against the present respondent Nos.1 to 7, and the petitioners. On account of non compliance of the interim orders passed in this complaints, the Union / employees filed criminal proceedings against respondent Nos.1 to 7, so also the petitioners. The criminal complaint came to be dismissed against the petitioners as the Court found that the petitioners were not the partners of respondent Nos.5 to 7 at the relevant point of time and the criminal complaint was dismissed against the respondent Nos.1 to 7 on merit. The stand of the

petitioner before the Labour / Industrial Court was that they, not being partners of respondent Nos.5 to 7 were not liable to pay the amount claimed by the employees.

5. Another limb of litigation also needs to be mentioned as the same too is relevant for the purpose of decision of the issue involved and the same is to the following effect.

6. The family of respondent Nos.1 to 4 were running business in the name and style "Shah Diagnostics Institute Pvt. Ltd. and the said Company had borrowed money from Canara Bank. The loan advanced by Canara Bank to Shah Diagnostics was secured by the respondent No.1 by mortgaging the property at Worli wherein the said three cinema theatres were located. Canara Bank enforced the said mortgage by intiating proceedings before the Debt Recovery Tribunal, Bombay and pursuant to the same, the entire property at Worli was auctioned. A sum of Rs.42 crores approximately was realised from the sale proceeds of Worli property, which is admittedly owned by respondent No.8 M/s. Manish Estates. The sale proceeds of the said property was deposited with Debt Recovery Tribunal. A portion of the amount which was realised by the Debt Recovery Tribunal was set apart for satisfying the claims of all the 79 employees. The amount was in the sum of about

Rs.95 lakhs.

7. There were 79 workers working with respondents 5 to 7. Respondents 5 to 7 were the cinema theatres administered and managed by the partnership firms of respondent no.1. As the workers were served with the notice of closure, they approached the Industrial court by filing a ULP complaint. In the said complaint entitlement of the worker's legal dues was not disputed. However the quantumn of amount involved was in dispute. The record reveals that the Industrial court had directed both the parties to file their calculations so that the amount of legal dues could be ascertained. When this exercise was going on, it was leqrnt that the property concerned, wherein said three cinema theatres were located which was owned by Manish Estate has been sold by auction for realising the dues of Canera Bank. The property fetched a sum of Rs. 42 crores when the dues of Canera Bank were less than Rs. four crores and as such there was a good amount of surplus left with the DRT, from and out of the sale proceeds of the properties of Manisha Estate. As the funds were lying with the DRT. the workers approached the industrial court by making an application to arrive at the amount of legal dues so that the workers can legitimately approach the DRT and make a request for setting apart of that amount which in turn could satisfy the claims fo the workers. The Industrial

court had tentative figures with it in relation to the legal dues of the workers, as submitted by the workers on the one hand and the employer on the other hand. The amount acclording to the workers, was in the sum of Rs. 119 lacs whereas according to the Respondent nos.1 to 7 the same was Rs. 63 lacs. In this fact situation, the Industrial court permitted the workers to approach DRT by an appropriate application. It is in this fact situation, that the workers moved DRT by filing an intervention application. The Industrial court has granted liberty tio the workers to approach DRT by an order dated 2-5-2005. When the workers approached DRT, the DRT passed an order below Exh.80. By that order, amount of Rs. 9571922/- was directed to be deposited in a fixed deposit for a period of six months with the applicant bank. Obviously, the said amount was set apart for meeting the claim of workers. As the DRT was of the view that the amount in its possession were that of Manish estate and not of Satyam, shivam, Sundaram enterprises it directed the workers to move before the appropriate authority and make Manish estate,the owner of the property, a party. Manish estate has been thereafter impleaded as party respondent before the Industrial court on an application moved by the workers. The DRT had released a sum of about Rs. 28 lacs towards the legal dues of 24 workers out of total number of 79 workers. Thus the legal dues of only 55 workers remained to be paid and

the balance amount of remaining 55 workers is in the range of about Rs 69 lacs is with DRT. Manish estate was impleaded as party respondent before the Industrial court prior to the filing of the three criminal writ petitions in the High Court, to which a reference is made hreinbelow.

8. In the above factual background, three Criminal Writ Petitions No.2078 of 2006, 2085 of 2006 and 2086 of 2006 came to be filed. The said Writ Petitions were filed by respondent Nos.1 to 7 herein. In those Criminal Writ Petitioners, the order of issuing process in Criminal Complaints was challenged. The process was issued on account of alleged breach of undertaking committed by the present respondent No.1 who had undertaken not to dispose of the property at Worli till the dues of the employees are settled. In the said Writ Petitions, the present petitioners were not impleaded as parties. Consent terms entered into between the respondent Nos.1 to 7 and workers were tendered in this Court and the respondent No.8 had joined therein and also agreed to pay all the dues of the workers of respondent Nos.5 to 7. The High Court vide order dated 14/12/2006 instead of accepting the consent terms directed the parties to approach the Debt Recovery Tribunal. The High Court observed that the consent terms are taken on record for the purpose of information, and parties were relegated to the Debt

Recovery Tribunal for filing of the consent terms. The parties approached the Debt Recovery Tribunal and the workers moved an application for release of the amount in favour of the Registrar, Industrial Court Mumbai. The Recovery Officer passed an order that the amount of Rs.50,79,688/- will be released to the Registrar of the Labour Court towards dues of 55 workmen after the consent terms are taken on record and accepted by the appropriate forum, as Debt Recovery Tribunal has no jurisdiction to adjudicate the claim of workmen. In other words, the Debt Recovery Tribunal suggested that appropriate orders need to be obtained from the Labour Court and it has no jurisdiction to pass the order as sought by the workmen. The workmen thereafter approached the Industrial Court. These workers moved the Industrial Court by an application at Exhibit 33. It appears to be the submission of the workers before the Industrial Court that to facilitate satisfaction of the claims of the workers, a sum of money has been set apart by the Debt Recovery Tribunal which is that of M/s. Manish Estates and that M/s. Manish Estates is ready and willing to satisfy the claim of workmen, hence directions were solicited from the Industrial Court. The Industrial court by its order dated 17/1/2007 granted permission to the 55 workmen to withdraw the amount on its transfer to the the office of the Industrial Court from the Debt Recovery Tribunal. It is this order passed by the Industrial

Court which permits the 55 workmen to withdraw the amount, which has been challenged by filing the present Writ Petition.

9. Reverting back to the contentions raised in this petition the crux of the submission is that the petitioners are 50% share- holders in M/s.Manish Estates. It is then contended that they were illegally removed from the Directorship of the respondent No.8. On the own showing of the petitioners, they were in the past holding the post of Directors of the respondent No.8, but came to be removed though they happened to be 50% share-holders. It is thus clear that the respondent Nos.1 to 4 group is in administration and control of the affairs of the respondent No.8 as if Directors. The petitioners grievance is that the respondent Nos.1 to 4 are siphoning money from the corpus of respondent No.8 for satisfying their personal liabilities. It will not be out of place to mention that the respondent Nos.5, 6 & 7 were (partnership firms) cinema theatres owned by respondent Nos.1 to 4 and for meeting the expenses towards the payment of the dues of their workmen, money is being provided by respondent No.8, is the grievance. The petitioners are undoubtedly only the share holders of the company and are not its Directors. The position that emerges from the facts narrated hereinabove is that the share holders are objecting to the decision taken by the

Directors of the respondent No.8 Company who has agreed to take over the liabilities of the employees to the extent of their dues against respondent Nos.5 to 7. In substance, the challenge of the petitioners is to the decision taken by the Board of Directors of the respondent No.8 to satisfy the debts of the workers of Respondents 5 to 7. Thus, the question that emerges is that can the share holders question the authority of the Directors of the Company to pay the debts in the present proceedings and my answer to the same is in the negative. The proceedings are under the labour/Industrial laws. This is not the appropriate forum for petitioners to raise their greivance referred to hereinabove.

10. The next submission of the learned counsel for the petitioners is that once the Debt Recovery Tribunal expressly held by its order dated 23-9-2005that the funds of M/s. Manish Estate cannot be used for satisfying the dues of the workers of respondent Nos.5 to 7, then it was not permissible for the Industrial Court, acting on the consent terms to permit the withdrawal of the amount. In the submission of the learned counsel, it is a fraudulent act on the part of the respondent No.1 intended to siphon the funds from the respondent No.8 Company for satisfying the personal liabilities of the respondent No. 1 to4 by seeking orders from the Courts or under the guise of

the orders of the Court. What is relevant to note is that if Manish Estate agrees to pay the claims of workers of Respondent nos. 5 to 7, which it has then there is no impediment in the way of the Industrial court to accept the consent terms. It is relevant to note that Manish Estate is a party to the proceedings before the Industrial court.

11. It is next contended by the learned counsel for the petitioner that the Consent Terms were filed in the High Court in Criminal writ petitions and what was filed before the Industrial court was the copy of the consent terms filed in the High Court and hence the Industrial court was not competent to pass any order thereon. Per contra the learned counsel appearing for the respondent submitted that fresh consent terms which were identical with the consent terms filed in the High Court were filed before the Industrial court and thus the Industrial court has rightly passed the order. In this view of the matter I do not find any error committed by the Industrial court in passing the orders in the Consent terms. No doubt Consent terms were initially filed in the criminal Writ petitions in the High court. But the High Court relegated the parties for filing of the consent terms to DRT. The DRT thereafter found that it has no jurisdiction to entertain the dispute between the employer and the workman and hence passed an order that the parties

should approach the appropriate forum and thus the parties have moved the Industrial court in a pending complaint, which in my view cannot be termed even remotly a fradulent act.

12. It is then submitted that no court has examined the stipulations in the consent terms and that no court has determined the liability of the payment of workmen of respondent nos. 5 to 7. The respondent nos. 1 to 7 did not at any point of time dispute their liability before the Industrial court towards the dues of workman. What was disputed was the quantumn of amount. The respondent nos. 1 to 7 so also Manish Estate respondent no.8 agreed to the quantumn of amount under the Consent Terms. As parties arrived at settlement on the quantumn of money payable to the workmen, there was no necessity for the Industrial court to determine the exact liability. In the facts and circumstances of the present case, I have no iota of doubt that the Industrial court had jurisdiction to pass the order imopugned in this petition.

13. Reverting back to the main greivance of the petitioner that the directors of respondent no.8 are sifaning the money from the corpus of respondent no.8 for payment of liabilities of respondent nos. 1 to 7, it cannot be addressed in the present proceedings and for that purpose the petitioner will have to move the

appropriate forum. As share holders the petitioner's locus to question the decision of the Board of directors of respondent no.8 in these proceedings is itself doubtful. The learned counsel for the workmen has pointed out that the petitioners have not challenged various orders passed in the proceedings before the DRT and the Industrial court and thus cannot question the impugned order which is passed in consent terms. It is pointed out that the order below Exh.18 dated 5-12-2005 passed by the Recovery officer of DRT setting apart a sum of Rs. 95 lacs towards workers dues has not been challenged. The subsequent order dated 8-8-2006 yet again passed by the Recovery Officer, DRT has also not been challenged. The order dated 5-12-2005 passed by DRT whereby the workers were directed to move the Industrial court for impleadment of respondent no.8 was not challenged. The order passed by the Industrial court permitting impleadment of Manish Estate in the ULP complaint No.1043 of 2002 is also not challenged. The order below exh.289 dated 27-12-2006 has also gone unchallenged. Besides that the main contention of the workmen is that having settled the dispute for almost 1/3rd of their claim, which has been found to be just and proper by the Industrial court, does not warrant any interference in exercise of writ jurisdiction. As stated hereinbefore, out of 79 workers, 24 workers have received their dues whereas 55 workers remain to be paid the amount for

which the parties are ltiigating before the different forum. Having regard to the totality of the facts and circumstances, I decline to exercise the discretion in favour of the present petitioner and thus conclude that no interference with the impugned order is called for. In the result the writ petition fails and is dismissed.

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